

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

In the Matter of:)
DAVID McATEE,)
)
Deceased.)
_____)
CHERYL ANN STEVENS-McATEE,)
)
Claimant,)
)
v.)
)
POTLATCH CORPORATION,)
)
Employer,)
and)
)
WORKERS COMPENSATION EXCHANGE,)
)
Surety,)
Defendants.)
_____)

IC 2004-003559

ORDER ON REMAND

filed June 18, 2008

INTRODUCTION

This Order on Remand follows the Idaho Supreme Court's opinion issued in the above-referenced case on February 15, 2008. At issue on appeal was whether McAtee proved his herniated disc was caused by a compensable accident. The Supreme Court determined that the Commission's findings as to McAtee's credibility and causation are not supported by substantial and competent evidence and that attorney fees for all stages of the claim are warranted pursuant to Idaho Code § 72-804.

First, the Commission will address Claimant's Motion for Substitution of Party Claimant filed on January 8, 2008. Having received no objection from Defendants and after review of the

motion's supporting documents stating that Cheryl Ann Stevens-McAtee was appointed as personal representative of David Joel McAtee's estate following his death, the Commission orders that Cheryl Ann Steven-McAtee will be substituted in place of David McAtee (McAtee) as Claimant in this matter.

ISSUES

The Commission is issuing this order on remand to address the following issues:

1. Whether Claimant suffered an injury caused by an accident arising out of and in the course of employment; and
2. Whether and to what extent Claimant is entitled to the following benefits:
 - a. temporary disability;
 - b. medical care; and
 - c. attorney fees.

INCORPORATING PRIOR RECOMMENDATION

The Commission hereby incorporates its Findings of Fact, Conclusions of Law, and Recommendation filed on April 18, 2006, into this Order on Remand with the following deletions, substitutions, and additions.

The Findings of Fact as presented in paragraphs 1 through 20 remain. The Discussion as presented in paragraphs 21 through 26, as well as Conclusions 1 and 2 are deleted and replaced with the following paragraphs.

DISCUSSION AND FURTHER FINDINGS OF FACT

21. **Accident and Causation.** A claimant must prove he was injured as the result of an accident arising out of and in the course of employment. Seamans v. Maaco Auto Painting, 128 Idaho 747, 918 P.2d 1192 (1996). Proof of a possible causal link is not sufficient to satisfy this burden. Beardsley v. Idaho Forest Industries, 127 Idaho 404, 901 P.2d 511 (1995). A claimant must provide medical testimony that supports a claim for compensation to a reasonable

degree of medical probability. Langley v. State, Industrial Special Indemnity Fund, 126 Idaho 781, 890 P.2d 732 (1995).

22. McAtee's testimony about the events that took place at work on March 9, 2004, relating to the onset of pain and symptoms is credible and supported by substantial medical evidence. The Commission finds that Claimant suffered an injury caused by an industrial accident on March 9, 2004, arising out of and in the course of employment.

23. **Medical Care and Temporary Disability.** The issues of entitlement to medical care and temporary disability benefits were also at issue before the Commission in the original proceeding. The parties did not brief any particular disputes regarding these issues. Defendants merely contended that because McAtee did not suffer an injury caused by an industrial accident he has no entitlement to temporary disability or medical care benefits.

24. As discussed above, McAtee did suffer a compensable industrial accident on March 9, 2004, causing injury. Idaho Code § 72-432(1) obligates an employer to provide an injured employee reasonable medical care as may be required by his or her physician immediately following an injury and for a reasonable time thereafter. Defendants are responsible for reasonable medical care related to McAtee's industrial injury.

25. Idaho Code § 72-408 provides that income benefits for total and partial disability shall be paid to disabled employees "during the period of recovery." Defendants are responsible for temporary disability during McAtee's period of recovery.

26. **Attorney Fees.** The Supreme Court decision filed on February 15, 2008 also awarded attorney fees, pursuant to Idaho Code § 72-804, to Claimant/Appellant "for all stages of McAtee's claim including those below, on appeal, and on remand." Additionally, the Supreme Court filed an Order Awarding Attorney Fees and Costs on Appeal on April 25, 2008.

27. The Commission finds that the evidence shows McAtee herniated his disc during his work shift on March 9, 2004, and the denial of his claim was unreasonable. Claimant is entitled to attorney fees from Defendants pursuant to Idaho Code § 72-804.

CONCLUSIONS OF LAW AND ORDER

1. Claimant suffered an injury caused by an industrial accident on March 9, 2004, arising out of and in the course of employment.

2. Claimant is entitled to temporary disability and medical care related to the March 9, 2004 industrial accident.

3. Attorney fees, pursuant to Idaho Code § 72-804, are granted to Claimant due to the unreasonable denial of the claim by Defendants. Unless the parties can agree on an amount for reasonable attorney fees, Claimant's counsel shall, within twenty-one (21) days of the entry of the Commission's Order on Remand, file with the Commission a memorandum setting forth the amount and basis for attorney fees requested in this case. Counsel shall also provide a copy of the fee agreement executed by Claimant and his attorney, and an affidavit in support of the claim for fees. The memorandum shall be submitted for the purpose of assisting the Commission in discharging its responsibility to determine reasonable attorney fees in this matter. Within fourteen (14) days of the filing of such documentation, Defendants may file a response to Claimant's information. If Defendants object to any representation made by Claimant's counsel, the objection must be set forth with particularity. Within seven (7) days after Defendants file their response, Claimant may file a reply. The Commission, upon receipt of the foregoing pleadings, will review the matter and issue an order determining attorney fees.

4. Pursuant to Idaho Code § 72-719, this decision is final and conclusive as to all issues adjudicated.

IT IS SO ORDERED.

DATED this __18th_ day of __June_____, 2008.

INDUSTRIAL COMMISSION

_____/s/_____
James F. Kile, Chairman

_____/s/_____
R.D. Maynard, Commissioner

_____/s/_____
Thomas E. Limbaugh, Commissioner

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on __18th day of __June_____, 2008 a true and correct copy of the foregoing **ORDER ON REMAND** was served by regular United States Mail upon each of the following:

NED A. CANNON
508 EIGHT STREET
LEWISTON, ID 83501

SCOTT CHAPMAN
PO BOX 446
LEWISTON, ID 83501

_____/s/_____